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In the Supreme Court of the United States

OCTOBER TERM, 1962.

No. 514.

JAMES ODDIE, EDWARD CWIERTNIEWICZ,
JOHN PENZAK, OSCAR KING,
HARRY C. BREMMER,

Petitioners,

v.

ROSS GEAR AND TOOL COMPANY, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI.

QUESTION PRESENTED.

Do the seniority rights of employees provided by the Detroit collective bargaining agreement of December 19, 1958, between Gemmer etc. and Local No. 80 U. A. W. apply to the Company's operations in Lebanon, Tennessee, upon a closing of the Company's plant located within the city limits of Detroit and the removal of a substantial portion of the equipment to a new plant in Lebanon, Tennessee?

STATUTE INVOLVED.

There is no federal statute involved in this action. Because jurisdiction of the District Court was invoked in this case on the ground of diversity of citizenship, Section 301(a) of the Labor-Management Relations Act, 61 Stat. 156 (1947), Title 29 U. S. C. Section 185(a) (1952) is not at issue in this matter.

STATEMENT OF THE CASE.

The "Statement of the Case" in the Petition (pp. 3-11) does not contain all of the facts material to the consideration of the questions presented.

Facts.

A substantial and significant omission in the recital of the facts is found in Petitioners' failure to include the bargaining history leading to the contract under which Petitioners seek to ascertain their rights. The importance of these facts is evident from the opinion of the Court of Appeals. (Pet. pp. 48-49; *Oddie et al. v. Ross Gear and Tool Company, Inc.*, 305 F. 2d 143, 150 (6th Cir. 1962))

Gemmer Manufacturing Company was an independent corporation until 1956, when it was purchased by Ross. (R. 86a.) Although the UAW has represented the employees at this Detroit plant since 1936 (R. 80a) the evidence was concerned with the collective bargaining contracts of 1948, 1951, 1955, and 1958, and the negotiations in connection therewith. (R. 79a.) The Petitioners' assertion that they should be given priority in employment at the new Lebanon, Tennessee, plant (referred to by Petitioners as seniority recall rights) is based upon their seniority which was created by the 1958 Detroit contract. (R. 7a.)

Respondent denied that the contract or any part of it applied outside the city limits of Detroit and based such denial upon the fact that those rights were applicable only to the plant (or plants) with respect to which the contract was made, and upon the preamble and the recognition portions of such contract as an express designation of the area of applicability of the contract and the rights thereunder.[1]

At the hearing in the trial court, a portion of the evidence was concerned with a change in the collective bargaining agreement between UAW and Gemmer in 1951 from the provisions of their agreement in 1947. The pre-

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[1] "THIS AGREEMENT is entered into this 19th day of December, 1958, by and between GEMMER MANUFACTURING COMPANY (of Detroit, Michigan), which is a division of Ross Gear and Tool Company, Inc. (a corporation of Lafayette, Indiana), and which Gemmer is hereinafter referred to as the 'Company,' and the INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (AFL-CIO), AND LOCAL 80, THEREOF, hereinafter referred to as the 'Union.'

"WHEREAS, the parties to this agreement desire to promote the spirit of harmony and cooperation between them and insure the most efficient operation of the Company's plant, the following agreement is entered into:

"RECOGNITION

"1. The Company recognizes the union as the exclusive representative of its employees *in its plant or plants which are located in that portion of the greater Detroit area which is located within the city limits of Detroit* for the purpose of collective bargaining on matters of wages, hours and conditions of employment, excluding those mentioned in the next succeeding paragraph. * * *

"19. Seniority shall be by departments except as herein specified." * * * "20 (e) Employees having one year or more of seniority at the time they are laid off can exercise plant-wide seniority in accordance with the following rules and procedures:" (Our emphasis.) (pp. 1, 11, 12 of the 1958 Collective Bargaining Agreement [hereinafter referred to as 1958 contract] which is bound into the Certified Record after R. 125a; see R. 9a.)

amble and recognition clause of the 1947 contract[2] set forth the street address of the Detroit factory of Gemmer and provided for the recognition of the Union as representative of the Company employees without any further limitation on application of the contract.

During the negotiations in connection with the 1951 agreement, the Union sought to delete the address from the preamble and to amend the recognition clause by describing the area covered by the contract as the Greater Detroit area. (R. 84a-85a.) The Union stated that the proposal was made to expand the application of the contract from the main factory at the Mt. Elliott Street address to include an experimental plant just outside the city limits of Detroit. (R. 85a.) The Company declined to accept the proposal as made, but did agree to amend the preamble and recognition clause in the 1951 collective bar-

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[2] "THIS AGREEMENT is entered into this 21st day of August, 1947, by and between Gemmer Manufacturing Company, 6400 Mt. Elliott Avenue, Detroit, Michigan, hereinafter referred to as the 'Company,' and the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) and Local No. 80 thereof, affiliated with the Congress of Industrial Organizations, hereinafter referred to as the 'union.'

"WHEREAS, the parties to this agreement desire to promote the spirit of harmony and cooperation between them and insure the most efficient operation of the Company's plant, the following agreement is entered into:

"RECOGNITION

"1. The Company recognizes the union as the exclusive representative of its employees for the purpose of collective bargaining on matters of wages, hours and conditions of employment, excluding those mentioned in the next succeeding paragraph.

"2. For the purpose of this agreement the term 'employees' shall not include direct representatives of the management, such as superintendents, foremen, assistant foremen, nor time study men, plant protection employees, watchmen, time-keepers who also act in the capacity of payroll clerk nor employees in the administrative office building, except those workers on factory payroll in experimental department." (Pl. Ex. A; R. 81a-82a, 109a-110a.)

gaining agreement. The change deleted the address from the preamble and described the area covered by the agreement as the plant or plants located in that portion of the Greater Detroit area within the city limits of Detroit.[3] The parties recognized that the revised language of the contract restricted the contract to the city limits of Detroit, so that it did not extend to the experimental plant located outside the Detroit city limits. (R. 85a.)

At the time of negotiating the 1955 collective bargaining agreement, the UAW again proposed to increase the scope of the recognition clause to cover all plants of the Company in the Greater Detroit area by deleting the reference to the city limits. (R. 111a.) This proposal was again rejected and the language of the 1951 contract was con-

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[3] THIS AGREEMENT is entered into this 11th day of May, 1951, by and between Gemmer Manufacturing Company, Detroit, Michigan, hereinafter referred to as the 'Company,' and the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) and Local No. 80 thereof, affiliated with the Congress of Industrial Organizations, hereinafter referred to as the 'Union.'

"WHEREAS, the parties to this agreement desire to promote the spirit of harmony and cooperation between them and insure the most efficient operation of the Company's plant, the following agreement is entered into:

"RECOGNITION

"1. The Company recognizes the Union as the exclusive representative of its employees in its plant or plants which are located in that portion of the greater Detroit area which is located within the city limits of Detroit for the purpose of collective bargaining on matters of wages, hours and conditions of employment, excluding those mentioned in the next succeeding paragraph.

"2. For the purpose of this agreement the term 'employees' shall not include direct representatives of the management, such as superintendents, foremen, assistant foremen nor time study men, plant protection employees, watchmen, nor employees in the administrative office building, except those workers on factory payroll in experimental department." (Pl. Ex. 2; R. 83a-84a, 110a-111a.)

tinued in the 1955 contract. It was during the period of this contract that Ross purchased Gemmer. (R. 95a.)

The only negotiations with the UAW subsequent to the purchase of Gemmer by Ross occurred in 1958 when the contract upon which Petitioners sue was negotiated. (R. 3a.) In these negotiations, the Union again sought to amend the recognition clause by deletion of the city limits provisions but also sought the addition of two new subparagraphs to the first clause of the recognition section.[4] The subparagraphs proposed were concerned directly with the problems of seniority transfers in the event the Company moved its operations to other locations, or in the event the Company created plants or facilities at any other location.

A witness for the Petitioners testified that these proposals were made to give protection to the Detroit employees so that if the Company did move there would be "no danger of anybody losing his position." (R. 87a.) The Petitioners' witness testified further that he was aware that there was no legal protection to the employees from a transfer of operations if these subparagraphs were not adopted (R. 90a), and that no part of the contract would cover a plant just outside the city limits of Detroit. (R. 92a.) Mr. Oddie, one of the Petitioners, testified that the

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[4] "(a) *In the event the company creates other plants or facilities regardless of location* under the administration of the company, the union shall be recognized for the purpose of collective bargaining on matters of wages, hours, conditions of employment, *seniority transfers*, and all matters embodied in this agreement.

"(b) *In the event the company moves its operations to other locations*, the union shall be recognized for the purpose of collective bargaining on matters of wages, hours, and conditions of employment. Should this condition occur this matter will be subject to negotiations between the company and the union, such as moving costs of employees, severance pay, *seniority transfers*, and all other matters pertaining to this situation." (Our emphasis.) (Def. Ex. 2, R. 112a, 99a.)

purpose of the proposal was to extend coverage of the contract to a plant that was not covered otherwise by the contract. (R. 109a.)

These proposals were rejected by the Company (R. 100a-101a) and were not included in the 1958 collective bargaining contract (p. 1-58, 1958 Contract).

The Proceeding Before the District Court.

Petitioners filed a class action on behalf of themselves, and others similarly situated, in the United States District Court, Eastern District of Michigan, for a preliminary injunction and declaratory relief. (Pet., pp. 5-6.) This action was based upon diversity jurisdiction and was not brought under Section 301(a) of the Labor-Management Relations Act. (61 Stat. 156 (1947); 29 U. S. C. § 185(a) 1952)) It is clear however, that Petitioners relied upon *Zdanok v. Glidden Co.*, 288 F. 2d 99 (2d Cir. 1961), *cert. granted on procedural grounds*, 368 U. S. 814; *aff'd* 370 U. S. 530 (1962) rather than the provision of the 1958 contract as the foundation of their cause. (R. 7a; R. 40a.)[5]

It is equally clear that the District Court founded its decision upon its interpretation of that case. In concluding that Petitioners and other Detroit employees had seniority recall rights at the new Lebanon, Tennessee, plant, the court stated:

> "But the issue at the moment evolves about the proposition as to whether or not the contract can be annulled unilaterally by the mere moving of the Defendant's plant to another state.

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[5] "And, as you know, as I have indicated, our argument in favor of the application of these employees' seniority rights is not based or tied to the carrying of this contract to Lebanon, Tennessee. It is based on vested rights which these employees have and will carry with them whether or not the contract is moved to Lebanon, Tennessee." (Argument of Petitioners' attorney. R. 66a.)

"To be consistent with the *Glidden* case, *supra*, if that were the only issue, the answer would obviously be 'No'." (R. 114a.)

* * * * *

"This Court feels bound by the *Glidden* case, *supra*, and its reasoning, and since there is nothing within the contract now in force to the contrary, those seniority rights are to continue." (R. 118a.)

"Therefore, the contract being not to the contrary, and pursuant to the holding in the *Glidden* case, *supra*, defendant has an obligation and duty to rehire on the basis of seniority those employees laid off in Detroit when that plant's operations are removed to Lebanon, Tennessee." (R. 120a.)

The Proceeding Before the Court of Appeals.

In the Court of Appeals Petitioners admit that they again "* * * relied heavily on Glidden." (Pet., p. 9)

Contrary to the statement in the Petition (Pet., p. 10) the Court of Appeals did not rely *solely* upon the language "plant or plants which are located in that portion of the greater Detroit area which is located within the city limits of Detroit." This language was merely one of a number of factors upon which the Court of Appeals relied in its interpretation of the 1958 contract.

It is evident from the opinion that the court attached considerable importance to the language quoted since the Petitioners themselves had conceded at the hearing below that no part of the contract applied to an existing plant just outside the city limits of Detroit (Pet., pp. 44-45; 305 F. 2d 143, 148). The significance of this language was also enhanced by the fact that it was designed to cover employees at any plants which the Company might have within the area described and was not merely a description of an existing facility. (Pet., pp. 45-46; 305 F. 2d 143, 149.)

The Court of Appeals attached considerable significance to the collective bargaining history which preceded the 1958 contract including the attempt by the Union specifically to cover the question of transfer of seniority in negotiating the 1958 contract. (Pet., pp. 48-49; 305 F.2d 143, 150.) The Court of Appeals was also assisted in its interpretation of the contract by the fact that the Union had merely requested that employees affected by the transfer of the plant be given an opportunity to go to Lebanon, Tennessee, while after the decision of the Court of Appeals for the Second Circuit in *Glidden*, this request became a "* * * claim that such rights existed under the ruling in that case." (Pet., pp. 49-50; 305 F. 2d 143, 150-151.)

From these factors the Court of Appeals concluded:

> "Under our construction of the agreement the employees acquired no seniority rights under the 1958 agreement as employees at the Tennessee plant. Since no rights were acquired, we do not reach the question of any rights being cut off by unilateral action on the part of the defendant, either during the existence of the bargaining agreement or after its expiration." (Pet., p. 48; 305 F. 2d 143, 150.)

Such construction was, in the opinion of the Court of Appeals, in accord with the construction which the parties themselves had given to the contract as shown by their actions thereunder. (Pet., p. 50; 305 F. 2d 143, 151.)

The opinions of the Courts of Appeals for the Second and Third Circuits in *Glidden* and *Metal Polishers Union v. Viking Equipment Co.*, 278 F. 2d 142 (3d Cir. 1960) were distinguished by the Court of Appeals for the Sixth Circuit as cases involving interpretations of contracts materially different from that before it. (Pet., p. 46; 305 F. 2d 143, 149.)

The Petitioners, in their description of the opinion of the Court of Appeals below, would lead this Court to believe that the opinion was based solely upon a state common law rule of commercial contracts (Petition, p. 11), while in fact those cases were cited by the Court of Appeals for the universally applicable rule that:

> "We must construe the contract as it is written, rather than make a new contract for the parties." (Pet., p. 45; 305 F. 2d 143, 148.)

Not one case from any jurisdiction is cited in the Petition as contrary to this rule.

ARGUMENT.

A. THERE IS NO CONFLICT BETWEEN COURTS OF APPEAL.

1. Introduction.

The Petitioners, in asserting that there is a conflict between the Courts of Appeal for the Second and Third Circuits[6] and the opinion of the Court of Appeals for the Sixth Circuit below, confuse a rule of law with a result in a case. It is true that the result reached by the court below differed from the result reached by the Courts of Appeal for the Second and Third Circuits but not because of an application of conflicting rules of law but rather because of the application of the same rule of law to different factual situations presented by different collective bargaining contract provisions.

It is universally recognized that seniority rights of employees are contractual in their origin and that their scope and significance are to be determined by reference

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[6] *Zdanok v. Glidden Co.*, 288 F. 2d 99 (2d Cir., 1961), *cert. granted on procedural grounds*, 368 U. S. 814; *aff'd* 370 U. S. 530 (1962); *Metal Polishers Union v. Viking Equipment Co.*, 278 F. 2d 142 (3d Cir, 1960).

to the contract creating them. Thus Mr. Justice Frankfurter in describing seniority in *Aeronautical Industrial Dist. Lodge 727 v. Campbell*, 337 U. S. 521 (1949), in speaking for this Court, said:

> "Barring legislation not here involved, seniority rights derive their scope and significance from union contracts, confined as they almost exclusively are to unionized industry." [7] (337 U. S. 521, 526.)

From application of this universal rule different results may arise as contract provisions vary, but conflicts between Courts of Appeal do *not* thereby arise.

2. The Court of Appeals for the Second Circuit.

Much has been said about the decision of the Court of Appeals for the Second Circuit in *Glidden* both in the Petition and elsewhere.[8] This action was based upon that decision of the Court of Appeals for the Second Circuit. (R. 7a, 40a-44a.) The Court has had an opportunity to examine that case.[9] Respondent asserts that such case is authority for the proposition that the scope, nature and extent of seniority, including seniority rights, must be determined from a construction of the contract creating such rights.

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[7] Accord: *Local Lodge No. 2040, Etc. v. Servel, Inc.*, 268 F. 2d 692 (7th Cir. 1959), *cert. den.*, 361 U. S. 884; *Elder v. N. Y. Cent. R. R.*, 152 F. 2d 361 (6th Cir. 1945); *System Federation No. 59 v. Louisiana & A. Ry.*, 119 F. 2d 509 (5th Cir. 1941) *cert. den.*, 314 U. S. 656; *Enterprise Wheel & Car Corp. v. United Steelworkers*, 269 F. 2d 327 (4th Cir. 1959), *rev'd on other grounds*, 363 U. S. 593 (1960).

[8] Pet., pp. 2, 5, 9, 10, 12, 20, 21, 25, 26, 28, 29, 32, and 33; Aaron, *Reflections on the Legal Nature and Enforceability of Seniority Rights*, 17 Harvard Law Rev. 1532 (1962); Lowden, *Survival of Seniority Rights Under Collective Bargaining Agreements, Zdanok v. Glidden Co.*, 48 Va. Law Rev. 291 (1962).

[9] The Court denied certiorari on the merits of the opinion of the Second Circuit and granted certiorari limited to a procedural question. 368 U. S. 814.

Judge Madden, on behalf of the majority, in deciding the issue of the seniority rights asserted by employees in that case analyzed the Glidden collective bargaining agreement as follows:

> "The union contract, in its preamble, recited that it was made by the defendant company
>
> > 'for and on behalf of its plant facilities located at Corona Avenue and 94th Street, Elmhurst, Long Island, New York.'
>
> "*If this narrow geographical description is treated as setting fixed boundaries upon the scope of the contract, difficulties immediately arise.* * * *
>
> > "A rational *construction of the contract* would seem to require that the statement of location was nothing more than a reference to the then existing situation, and had none of the vital significance which the defendant would attach to it. Contracts must, in all fairness, be construed *ut res magis valeat quam pereat*. If not, the reasonable expectations of the parties are sacrificed to sheer verbalism." (Our Emphasis.) 288 F. 2d 99, 103-104.

The "narrow geographical description" (Corona Avenue and 94th Street) in the Glidden contract was found by Judge Madden to be nothing more than an identifying address which the court refused to treat as "setting fixed boundaries on the scope of the contract." But this conclusion is based upon a construction of that contract by that court.

The *Glidden* opinion is authority only for the legal proposition that the scope, nature, and extent of seniority transfer rights, like all other rights arising out of collective bargaining contracts, must be determined from a construction of the contract creating them. With this proposition the Respondent agrees. Since the Gemmer contract was materially different from the Glidden contract, the

situation presented for decision by the Sixth Circuit was wholly different.

If any comfort is to be drawn from the analysis by Judge Madden quoted above it must be by Respondent. The 1958 Gemmer contract and the evidence demonstrated that the geographical description in such contract was intended to fix the boundary on the scope of the contract and hence the rights thereunder.[10] Because the parties to the Glidden contract failed to draw such boundaries, the Court of Appeals for the Second Circuit refused to draw the boundaries for them. Because the parties to the Gemmer contract *did* draw its boundaries, the Court of Appeals for the Sixth Circuit refused to erase those boundaries and rewrite the Gemmer contract by judicial decision.

The Court of Appeals below and the Court of Appeals for the Second Circuit in *Glidden* applied the same universal principle that seniority rights must be determined from an interpretation of the contract, but a different result was reached by the two courts for the reason stated by the court below:

> "In that respect the agreement in the Glidden Company case is materially different from the agreement in the present case, and in our opinion is not applicable on this phase of the case." (Pet., p. 46; 305 F. 2d 143, 149.)

There is no conflict between the Courts of Appeal for the Second and Sixth Circuits on the questions herein involved.

3. The Court of Appeals for the Third Circuit.

The other case which Petitioners assert is in conflict with the opinion of the Court of Appeals below is the *per curiam* opinion of the Third Circuit in *Metal Polishers*

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[10] See discussion of facts, pp. 2-7, *supra*.

Union v. Viking Equipment Co., 278 F. 2d 142 (3d Cir. 1960).[11]

The District Court in the "oral conclusions" in *Viking*, quoted in the Petition, held:

> "In the court's estimation, an examination of the contract leads the court to the conclusion that it is implicit therein that *the contract applies to the area in which the company was then doing business.*" (Our emphasis.) (Pet., p. 27; opinion not reported.)

The preamble of the contract, also set forth in the Petition, provided in part:

> "Agreement entered into this First day of June, 1957, between Viking Company, doing business in East Orange, *and* in the State of New Jersey, * * *" (Our emphasis.) (Pet., p. 27.)

The Court of Appeals for the Third Circuit pointed out that the move in question was from East Orange, New Jersey, to Pennsauken, New Jersey.[12]

In reversing the District Court it held:

> "We disagree *with the district judge in his interpretation of the contract.* We do not think it is to be *interpreted* as applicable only to Defendant's activities in *East Orange,* New Jersey." (Our emphasis.) (278 F. 2d 142, 143.)

Respondent's position with respect to this authority is the same as its position with respect to *Glidden.* The opinion of the Court of Appeals for the Third Circuit is authority for the proposition that the area of applicability of a collective bargaining contract must be determined by an *interpretation of the terms of the contract.* The application of this principle to the Viking contract

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[11] Pet., pp. 2, 3, 12, 25, 27, 28, 30.

[12] *Metal Polishers Union v. Viking Equipment Co.*, 278 F. 2d 142 (3d Cir. 1960).

may be fairly characterized as: "East Orange *and* the State of New Jersey is a broad area description which includes the area within the city limits of East Orange, New Jersey, so that upon any plant relocation *within* the State of New Jersey the contract remains in force." With this contract interpretation the Court of Appeals for the Sixth Circuit did not disagree.

As held by the court below:

> "In *Metal Polishers, etc. v. Viking Equipment Co.*, 278 F. 2d 142, C. A. 3rd, also relied upon by the plaintiffs, it appears that the new location of the plant involved was still within the geographical limits referred to in the collective bargaining agreement, which, of course, is vitally different from the situation which we are considering in the present case." (Pet., p. 46; 305 F. 2d 143, 149.)

There is no conflict between the Court of Appeals for the Third Circuit and the Court of Appeals for the Sixth Circuit on the questions herein involved.[13]

4. Conclusion.

This Court[14] and the Courts of Appeal for the Second, Third, and Sixth Circuits agree that the scope and significance of the many rights created under collective bar-

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[13] It should be noted that *Viking* involved an action by a Union under § 301 of the Labor Management Relations Act [Title 29 U. S. C. § 185 (a)] for money damages, to compel mediation pursuant to the contract and for injunction to prevent a contract with another union for the relocated plant. (278 F. 2d 142.) It is clear that the plaintiff union was asserting that the *entire contract* was applicable to the relocated plant which was within the area described in the contract. So also would the *entire* Gemmer contract have applied to any relocated plant within the city limits of Detroit, the area described in its contract.

[14] *Aeronautical Industrial Dist. Lodge 727 v. Campbell*, 337 U. S. 521 (1949).

gaining contracts are to be determined from a construction of the contract. Such principle is not in conflict with opinions of other circuits[15] and such a rule must govern if there is to be any certainty for the parties to such contracts.

B. NO IMPORTANT QUESTION OF FEDERAL LAW IS INVOLVED.

1. Introduction.

In its Rule 19, this Court has set forth the character of reasons which will be considered in determining whether special and important reasons exist for granting review on writ of certiorari. This case falls neither within the specific reasons nor the policy enunciated in the Rule.[16]

The Court of Appeals below determined the meaning of a particular collective bargaining contract within the framework of the contractual terms and the collective bargaining history from which those terms were developed. Such a decision, by its very nature, is applicable only to its particular situation and cannot have general applicability. This decision was based upon principles of law *common to both state and federal law.* The decision is not one of general significance.

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[15] *Enterprise Wheel & Car Corp. v. United Steelworkers,* 269 F. 2d 327 (4th Cir. 1959), *rev'd on other grounds,* 363 U. S. 593 (1960); *System Federation No. 59 v. Louisiana & A. Ry.,* 119 F. 2d 509 (5th Cir. 1941) *cert. den.,* 314 U. S. 656; *Local Lodge No. 2040, Etc. v. Servel, Inc.,* 268 F. 2d 692 (7th Cir. 1959), *cert. den.,* 361 U. S. 884.

[16] The Court of Appeals for the Sixth Circuit did *not* render a decision in conflict with another court of appeals (pp. 10-15, *supra*), nor did it *decide* an important question of federal law, decide a federal question in conflict with this Court, or depart from procedures which call for an exercise of this Court's power of supervision. Rule 19.

2. Seniority Under the Gemmer Contract.

There is no doubt that any seniority rights of the Petitioners must be based upon the contract from which they originated and from which their scope and significance are to be determined.[17] Without a collective bargaining contract the Petitioners would not have seniority rights.[18]

The provisions of the Gemmer contract which related to seniority spelled out in considerable detail their nature and extent.[19] Generally, seniority under that contract is departmental[20] but may become plant-wide except for skilled trades classifications.[21] Nowhere in the contract was it provided that seniority or any other rights created by the contract were applicable Company-wide or to a plant located outside the city limits of Detroit.

The portion of seniority which the Petitioners seek to assert is a right to exercise the recall to work provisions of the Detroit Gemmer contract at Lebanon, Tennessee (R.

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[17] *Aeronautical Industrial Dist. Lodge 727 v. Campbell*, 337 U. S. 521 (1949).

[18] *Elder v. N. Y. Cent. R. R.*, 152 F. 2d 361 (6th Cir. 1945), at 364 wherein the court held:

> "The seniority right of the man who toils, indoors or out, in a shop or in an office, is a most valuable economic security, of which he may not be unlawfully deprived. *The right, however, is not inherent.* It must stem either from a statute or a lawful administrative regulation made pursuant thereto, or from a contract between employer and employee, or from a collective bargaining agreement between employees and their employer. In the absence of statute, mere employment independent of the contractual conferring of special benefits upon those who have longest service records with the individual employer, creates no rights of seniority in retention in service or in reemployment." (Our emphasis.)

[19] 1958 contract, pp. 10-28.

[20] Ibid., ¶ 19, p. 11.

[21] Ibid., ¶ 20 (e) p. 12, ¶ 20 (1), p. 14.

7a), but they do not cite any portion of the Gemmer contract providing for the application of these seniority recall rights at Lebanon, Tennessee, nor can they cite any such portion. They are alleged to be applicable *solely* "* * * under the doctrine of *Zdanok v. Glidden Co.*, 288 F. 2d 99 (2nd Cir. 1961) * * *" (R. 7a; R. 40a; R. 66a.)

The UAW, which was the collective bargaining agent for Petitioners, was well aware of the method by which seniority may be transferred upon a plant relocation *that is*: through a provision of the contract creating such rights. Pursuant to their announced intention to obtain provisions in collective bargaining agreements providing for transfer of seniority upon plant relocation,[22] the Union proposed an addition to the Gemmer contract in 1958 to extend seniority if there was a plant relocation.[23] This effort failed.[24] Petitioners now contend that since the contract is silent in this respect they have the right to assert seniority in Tennessee. To do this they confuse what they designate the "doctrine" or "rule" of the *Glidden* case with its *result*.

The Court of Appeals for the Sixth Circuit held that the Gemmer contract and *all* rights thereunder were

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[22] In the 1958 UAW convention the delegates approved as one of their bargaining aims for 1958 the following: "As to plant relocations, the UAW wants these guarantees: (1) Right of an employee to transfer to the new location with full seniority rights, including pensions, insurance, and SUB credits accumulated at the old plant; (2) recognition of the UAW as the bargaining agent at the new plant with maintenance of contract standards and comparable wage rates; (3) compensation to the worker for the cost of moving his family to the new plant; (4) adequate severance pay to cover the readjustment period for those workers who elect not to make the transfer; and (5) area-wide seniority in multi-plant companies to facilitate transfers." (39 L. R. R. M. 41 (1948))

[23] See 1958 Union proposals, *supra*, Footnote 4.

[24] See p. 1, 1958 contract.

restricted to the city limits of Detroit. This decision was based upon an *interpretation* of that contract in light of the evidence relating thereto, and this *result* is not in conflict with the "*rule*" of *Glidden*. The rule requiring that effect be given to the intention of the parties to the contract is common to "state law" *and* to "federal law."

3. The Result Below Is Based Upon the Application of a Principle of Law That Is Both State and Federal.

The rule of the Court of Appeals for the Sixth Circuit is not a "novelty,"[25] an "innovation,"[26] or a "clear departure from well settled concepts."[27] The rule applied by the Court of Appeals for the Sixth Circuit in reaching its result is in accord with every *federal* and *state* decision which has concerned itself with the problem of seniority. That the results of the application of this rule are not always uniform does not indicate a conflicting rule but rather reflects the fact that the provisions of collective bargaining contracts vary. In the absence of the uniformity of such contracts there can be no "rule of law," federal or state, which answers the question of whether or not seniority rights will transfer to a relocated plant under *all* contracts. The "federal law" and "state law" are the same.

The general principle is illustrated by two recent decisions of this Court handed down the same day.[28] In *Sinclair* an employer brought an action under Section 301 for damages arising out of a breach of a no-strike clause in

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[25] Pet. p. 23.

[26] Ibid., p. 25.

[27] Ibid., p. 23.

[28] *Drake Bakeries v. Local 50, American Bakery Workers*, 370 U. S. 254 (1962); *Atkinson v. Sinclair Refining Co.*, 370 U. S. 238 (1962).

a collective bargaining contract. The union sought to have the action dismissed because the issue was arbitrable. In interpreting the provisions of that contract, this Court, in holding the issue was not arbitrable, found:

> "We think it unquestionably clear that the contract here involved is not susceptible to a *construction* that the company was bound to arbitrate its claim for damages against the union for breach of the undertaking not to strike." (Our emphasis.) (370 U. S. 238, 241.)

In the *Drake Bakeries* case, an employer also sought damages from a union in an action under Section 301 for breach of a no-strike clause in *their* contract. This Court, in determining the issue to be arbitrable under *that* contract, determined:

> "Moreover, in this case, *under this contract,* by agreeing to arbitrate all claims without excluding the case where the union struck over an arbitrable matter, *the parties have negatived any intention* to condition the duty to arbitrate upon the absence of strikes." (Our emphasis.) (370 U. S. 254, 261, 262.)

Thus, opposite results were reached the same day, in *Sinclair* and *Drake Bakeries* from the application of the universal principle that the rights and obligations of the parties to collective bargaining contracts shall be determined from construction of those contracts.

The Petitioners ask the Court to "* * * review general rules of interpretation for two of the most basic provisions found in all collective bargaining contracts: the recognition clause and the seniority provision." But the general rules for interpretation of *these* provisions and *all* provisions of collective bargaining agreements have been laid down: *The function of the courts is to determine the intent of the parties to the contract and to give effect to that*

intent.[29] This was done by the Court below. There is *no* authority or federal policy to the contrary.

4. This Action Has Not Been Brought Under Section 301(a).

In *Lincoln Mills* the Court determined that the substantive law to apply in suits under Section 301(a) is federal law.[30]

This is not an action, however, *under* Section 301(a). The Petitioners herein brought suit on behalf of all employees as a class against their employer and based jurisdiction upon diversity of citizenship and the amount in controversy.[31] The issue of whether this action *could* have been brought under Section 301(a) was not presented for decision below and was not decided by either the Dis-

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[29] **Arbitration clauses:**

United Steelworkers v. American Mfg. Co., 363 U. S. 564, 567, 568 (1960). "The function of the court is very limited *when the parties have agreed* to submit all questions of contract interpretation to the arbitrator."

Atkinson v. Sinclair Refining Co., 370 U. S. 238, 241 (1962). "Under our decisions, whether or not the company was bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the Court on the basis of the contract entered into by the parties. * * *"

Drake Bakeries v. Local 50, American Bakery Workers, 370 U. S. 254 (1962).

No strike clause:

Mastro Plastics v. N. L. R. B., 350 U. S. 270, 279 (1956). "The answer turns upon the proper *interpretation of the* particular contract before us."

Accord:

Lewis v. Benedict Coal Corp., 361 U. S. 249 (1960).
N. L. R. B. v. Lion Oil Co., 352 U. S. 282 (1957).
Local 174, Teamsters Union v. Lucas Flour Co., 369 U. S. 95 (1962).

[30] *Textile Workers v. Lincoln Mills*, 353 U. S. 448, 456 (1957).

[31] R. 2a; Title 28 U. S. C., § 1332(a) (1958).

trict Court or the Court of Appeals for the Sixth Circuit. With respect to this jurisdictional question, the Petitioners have not brought themselves within the letter or intent of Rule 19 of this Court and, in effect, seek an advisory opinion.

In citing *Dowd Box*[32] and more especially *Lucas Flour* they seek to overcome the reluctance of this Court to give advisory opinions. In *Local 174; Teamsters Union v. Lucas Flour Co.*, 369 U. S. 95 (1962), the Court held that federal law applied to actions in state courts between employers and unions and that doctrines of federal labor law must universally prevail over inconsistent local rules. But in that case the state court had expressly applied principles of state law.[33]

The Court of Appeals for the Sixth Circuit did not expressly characterize its decision as "state law" or "federal law." Nor had it been asked to do so by Petitioners, and the result of this case would have been no different had the Court of Appeals done so. The authorities cited by the Court and the principles applied were common to both state law and federal law. Merely because the Court failed to label its opinion the Petitioners now ask this Court to grant certiorari and attach the label to it—not because this is necessary to prevent other courts from being misled into applying conflicting rules of state law, not because the Court of Appeals below failed to respond to a request by Petitioners that it determine federal law applied, not because Petitioners based their action on Section 301 and not because they assert that the Court of Appeals below wrong-

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[32] *Dowd Box Co. v. Courtney*, 368 U. S. 502 (1962).

[33] Although these state law principles were not found to conflict with federal law so that the result remained the same, it is clear that a state court had decided a federal question of substance not theretofore determined by this Court. (Rule 19, 1 (a))

ly interpreted the intent of the parties to this contract—but because the Petitioners find it necessary to go to great lengths to assert the existence of a federal question which actually is not involved.

5. Conclusion.

The Court below reached its decision by applying principles of law common to both the state and federal systems. It ascertained the intention of the parties to a collective bargaining contract pursuant to the law requiring it to do so, and, from the intention thus determined, decided that the Gemmer collective bargaining agreement and all rights thereunder applied only within the city limits of Detroit. This determination of intention from undisputed facts does not have general application nor does it represent a federal question of special and important effect.

CONCLUSION.

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CADICK, BURNS, DUCK & NEIGHBOURS.

November 13, 1962.